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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. No. 96-
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IMPROVING THE MANAGEMENT OF FEDERAL LANDS

COMPLETED ORIGINAL

NOVEMBER 17, 1980.—Ordered to be printed

Mr. Foley, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 7838 which on July 25, 1980 was referred jointly to the Committees on Agriculture, Interior and Insular Affairs, and Interstate and Foreign Commerce]

[Including Congressional Budget Office cost estimate]

The Committee on Agriculture to whom was referred the bill (H.R. 7838), to improve the management of the national forests through amendment of certain public laws affecting public land exchange and withdrawals, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, lines 3 and 4, strike out "the national forests" and insert in lieu thereof "Federal lands".

Page 2, line 12, strike out ", after the date of enactment of this subsection,".

Page 2, line 18, strike out "those" and insert in lieu thereof "such".

Page 2, line 21, strike out "those" and insert in lieu thereof "such".

Page 3, line 1, insert after "or" the following: "the Secretary".

Page 3, line 3, strike out "those" and insert in lieu thereof "such".

Add the following new section 2:

> SEC. 2. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

And amend the title so as to read:

A bill to improve the management of Federal lands through amendment of certain public laws affecting public land exchanges and reservations, and for other purposes.

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Brief Explanation

H.R. 7838 would amend the Act of July 8, 1943, and the Federal Power Act of 1920 as they affect the acquisition and reservation of certain Federal lands.

The Act of July 8, 1943, authorizes the Secretary of Agriculture to provide a quitclaim deed, to persons entitled thereto, to lands or interests in land the title to which is insufficient or which have been acquired by the United States through error, misunderstanding, or inadvertence. The Act, by its terms, does not, however, apply in cases where the lands or interests were acquired by exchange of public domain land or resources. This exception would be removed by H.R. 7838.

The Federal Power Act amendment would establish a procedure whereby the Secretary of Agriculture or the Secretary of the Interior could initiate the return, to the status they occupied prior to reservation, of Federal lands reserved for proposed projects under the Act but no longer needed for such purposes. Under current law, only the Congress or the Commission may direct entry, location or other disposal of reserved lands.

The bill also provides that nothing therein authorizes the conveyance of Federal lands within the National Wilderness Preservation System.

Purpose and Need

The Act of July 8, 1943, authorizes the Secretary of Agriculture to execute quitclaim deeds to lands or interests therein the title to which is insufficient or which are acquired by the United States through mistake, misunderstanding, error or inadvertence. However, the statute excepts from its coverage lands or interests acquired by the United States through exchanges for public domain lands. The only avenues of relief for the rightful owners in such cases are the time-consuming and expensive routes of private legislation or litigation. H.R. 7838 would remove the exception for lands or interests exchanged for public domain lands, thereby affording the Secretary of Agriculture general authority to issue quitclaim deeds to the rightful owners with respect to lands or interests therein subject to his administration the title to which is insufficient or which were erroneously acquired by the United States.

Section 24 of the Federal Power Act of 1924, as amended, provides that Federal lands may be reserved from entry, location, or other disposal upon filing of a preliminary permit application for a power project under that Act. These applications are now filed with the Federal Energy Regulatory Commission. There are several hundred such reservations on Federal lands and more reservations are expected in the future. These reservations impair the management of Federal lands for resource development or any purpose other than power development. Under present law, these lands can be restored to their former status only by the Federal Energy Regulatory Commission or by Congress, whether or not a projected power project is ever built. Unless and until the Commission or Congress acts, these Federal lands cannot be managed for other public purposes. H.R. 7838 would allow the Secretaries of Agriculture and Interior to initiate proceedings which can result in the return of these lands to Federal management under their

former status when it appears that power development will not occur. The Commission will retain the power to continue the reservation of these lands for power development if it notifies the appropriate Secretary that conditions to restoration specified in the bill do not exist. No reservation will be withdrawn with respect to lands that are presently in use for power projects.

Section-by-Section Analysis

Section 1 of H.R. 7838, as amended, amends both the Act of July 8, 1943, and the Federal Power Act of 1920.

The Act of July 8, 1943, authorizes the Secretary of Agriculture, with respect to lands or interests therein of the United States subject to the Secretary's administration, custody or control (other than land acquired by exchange of public domain land or resources), to execute a quitclaim deed to the appropriate person if the title thereto is insufficient for the purposes for which the land or interest was acquired and no consideration therefor has been paid by the United States, or if title thereto was acquired through mistake, misunderstanding, error, or inadvertence. H.R. 7838 would simply eliminate the exception for land acquired by exchange of public domain land or resources, thereby making such land subject to the Secretary's disposal authority under the circumstances specified in the Act.

Section 24 of the Federal Power Act of 1920 provides that lands of the United States in any proposed power project under the Act shall be reserved from entry, location, or disposal until otherwise directed by the Federal Energy Regulatory Commission or the Congress. H.R. 7838, as amended, would designate the current provisions of section 24 of the Act as subsection (a) and add a new subsection (b). The new subsection would provide that any lands reserved under subsection (a) would be unconditionally restored to the status they would have enjoyed had the reservation not occurred, if (1) no license application or new preliminary permit application for a project which would use or occupy such lands has been accepted for filing within five years from either the expiration date of the preliminary permit for the project if such a permit was issued, or the date of the final Commission order denying such a permit, and (2) the Secretary of Agriculture or the Secretary of the Interior has given notice to the Commission of intention to initiate action to restore the reserved lands to their prior status and the Commission has not, within 60 days from the date of such notice, notified the respective Secretary that the condition specified in clause (1) has not been fulfilled.

Section 2 of the bill provides that nothing therein authorizes the conveyance of Federal lands within the National Wilderness Preservation System.

Committee Consideration

A. HEARINGS

The Subcommittee on Forests held a hearing on H.R. 7838 on September 10, 1980. The only witness was Dr. Thomas C. Nelson, Deputy Chief, Forest Service, United States Department of Agriculture. In his testimony, Dr. Nelson said that H.R. 7838 would, by amending two

separate statutes, improve the management of Federal lands and increase the efficiency with which these lands may be exchanged or withdrawn.

Dr. Nelson stated that under present law, the Secretary of Agriculture may provide a quitclaim deed to the owner of lands acquired by the United States through mistake, misunderstanding, error or inadvertence, except lands acquired by exchange of public domain land or resources. As a result, he explained, the Secretary may not dispose by quitclaim deed of these latter lands. When public domain land is exchanged for private land, the Forest Service considers that the newly acquired land takes on the status of the land used in its acquisition; thus, private lands erroneously acquired through an exchange of public domain lands cannot be returned to their prior owners under present law. Dr. Nelson stated that H.R. 7838 would remove the exception explained above. He added that the only alternative to the approach reflected in the bill is private legislation or judicial relief.

In his prepared statement, Dr. Nelson also addressed the bill's proposed amendments to section 24 of the Federal Power Act of 1920, as amended. He stated that under that Act, Federal lands may be reserved from entry, location or other disposal upon the filing of a preliminary permit application for a power project with the Federal Energy Regulatory Commission. These lands remain reserved until restored to their former status by the Commission or by Congress, whether or not the power project is built. He noted there are several hundred such reservations now in effect on National Forest System lands and that the Forest Service expects that there will be more reservations in the future. Dr. Nelson explained that H.R. 7838 would, with respect to withdrawals made after the bill's enactment, enable the Secretary of Agriculture or the Secretary of the Interior to initiate action which would result in the restoration of these lands to the status they would have occupied if the reservation had not occurred.

Dr. Nelson then suggested an amendment to the bill which would make the provisions regarding withdrawals applicable to all Federal lands, rather than to National Forest System lands only.

Mr. Weaver, Chairman of the Subcommittee, remarked that the bill, as sent to Congress by the Forest Service, would not apply to the several hundred withdrawals now in effect. He asked whether the Federal Energy Regulatory Commission opposed the application of procedures established in H.R. 7838 to withdrawals which have already been made.

Dr. Nelson replied that the Forest Service believes that it can work with the Commission and, within a reasonable time, resolve most of the problems relating to existing withdrawals through formal procedures already in existence.

B. SUBCOMMITTEE MARKUP

The Subcommittee on Forests met in a business session on September 10, 1980, to consider H.R. 7838. The Chairman of the Subcommittee, Mr. Weaver, asked and received unanimous consent that three amendments he was offering be considered en bloc. He explained that the amendments were similar to amendments to H.R. 6257, a bill relating to sale or exchange of certain small tracts, which he had introduced at the request of the Department of Agriculture.

The amendments were as follows:

1. To make the amendments to the Federal Power Act applicable to reservations which have already been made, as well as to reservations which may be made after enactment of the legislation.

2. To add a new provision to the amendments to the Federal Power Act providing that all lands or interests in land returned to management shall, upon return, be subject to all laws, rules and regulations applicable thereto.

3. To add to the bill the provision that nothing therein shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

Mr. Weaver stated that the first amendment would make H.R. 7838 retroactive. He stated further that if the Federal Energy Regulatory Commission objected to the amendment, the original language could be restored.

The amendments were approved by unanimous voice vote.

Mr. Huckaby moved that H.R. 7838, as amended, be reported to the full Committee with a recommendation that it do pass. By unanimous voice vote, in the presence of a quorum, the motion was agreed to by the Subcommittee.

During markup of H.R. 6257, which was considered on the same day as H.R. 7838, a question was raised as to whether it was accurate or appropriate for H.R. 6257, and by implication H.R. 7838, as amended by Mr. Weaver's second amendment, to provide that "interests in land" accepted by the Secretary were to become National Forest System "lands" subject to all the laws, rules and regulations thereto. The Chairman directed counsel to clarify these matters; counsel's response was provided during the full Committee consideration of the bill.

C. FULL COMMITTEE MARKUP

On September 18, 1980, the full Committee met to consider H.R. 7838, as amended. In his opening remarks, Mr. Weaver briefly explained the purposes of the bill.

During Committee markup of H.R. 6257 (also on September 18), Mr. Weaver referred to an issue which relates also to H.R. 7838. He asked counsel to clarify a matter raised during Subcommittee markup—namely, whether it was accurate to provide that "interests in land," as well as "lands," were to become National Forest System "lands" subject to all the laws, rules and regulations applicable thereto. Counsel reported that the provision had been deleted from H.R. 6257 because, after discussions with representatives of the Forest Service, it had been concluded that striking out the provision would obviate any question, and that, if the language were found to present problems in other forest legislation, the bill was not an appropriate vehicle to resolve them. Counsel reported that, for the same reason, the provision had also been deleted from H.R. 7838.

On motion of Chairman Foley (Mr. Brown, Acting Chairman presiding), the Committee, in the presence of a quorum, by a unanimous voice vote, ordered H.R. 7838, as amended, reported to the House with a recommendation that it do pass.

Administration Position

The Secretary of Agriculture sent the following letter dated May 22, 1980, to the Speaker of the House of Representatives in which he recommended introduction and enactment of a draft bill similar to H.R. 7838.

Department of Agriculture,
Office of the Secretary,
Washington, D.C., May 22, 1980.

Hon. Thomas P. O'Neill,
Speaker of the House of Representatives,
Washington, D.C.

Dear Mr. Speaker: Transmitted herewith for the consideration of Congress is a draft bill "To improve the management of the National Forests through amendment of certain public laws affecting public land exchange and withdrawals, and for other purposes."

The Department of Agriculture recommends introduction and enactment of the draft bill.

The proposed legislation would amend two public laws that bear upon exchange and withdrawal of lands in the National Forest System.

Subparagraph (1) would amend the Act of July 8, 1943 (57 Stat. 388, as amended; 7 U.S.C. 2253) by extending the authority of the Secretary of Agriculture to provide a quitclaim deed to interests erroneously acquired by the United States when an exchange involves public domain land or resources. Interests of a private party who was not a proponent in an exchange of public domain may be acquired through error or inadvertent action. Since land acquired in exchange for public domain land or resources has been held to acquire the same status as the land or resources used in its acquisition, any erroneously acquired interest presently is not subject to disposal under the Act of July 8, 1943 (57 Stat. 388, as amended; 7 U.S.C. 2253). There is presently no way for the Department of Agriculture to clear an erroneously acquired interest in land of a third party. The landowner must seek private legislation of judicial relief.

Subparagraph (2) amends section 24 of the Federal Power Act of 1920, as amended (41 Stat. 1075, as amended; 16 U.S.C. 818), to provide that any lands of the United States, reserved from entry, location, or other disposal as a result of a filing of an application for a proposed power project under provisions of this act, would be returned to their former status if no license application or new preliminary permit has been filed within 5 years after the expiration date of a preliminary permit granted by the Federal Energy Regulatory Commission or after a denial of a preliminary permit by the Commission. The Secretary of Agriculture or the Secretary of the Interior would be required to notify the Commission of their intention to restore the reserved lands to their former status. The Commission would have 60 days to respond to the Secretary's notice before the restoration became final and the public land records were changed. The present language provides that these lands once such a filing for a proposed power project is made, will remain withdrawn until restored by specific action of the Commission regardless of whether the project is ever built. Several hundred withdrawals exist on National Forest System lands. Manage-

ment of these lands is impaired by this restriction. Resource development or land exchange cannot occur unless and until the Commission acts. This proposed amendment will have the effect of continuing in force any withdrawals on constructed projects but, in the case of lands withdrawn after enactment, will cause the restoration of lands where no project materializes. This proposal has been concurred in by the Department of the Interior.

The proposed amendments would not require additional outlays by the Federal Government. Savings to the Government should result in each case due to reduced administrative costs.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed legislation from the standpoint of the Administration's program.

A similar letter is being sent to the President of the Senate.

Sincerely,

BOB BERGLAND, *Secretary.*

Enclosure.

CURRENT AND FIVE SUBSEQUENT FISCAL YEAR COST ESTIMATE

Pursuant to clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee on Agriculture submits the following cost estimate. The Committee concurs with the estimate submitted by the Congressional Budget Office and included elsewhere in this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 7838, as amended, will have no inflationary impact on the national economy.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority or new or increased tax expenditures) are not considered applicable. The estimate and con parison prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 23, 1980.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture, U.S. House of Representatives,
1301 Longworth House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7838, a bill to improve the management of the federal lands

through amendment of certain public laws affecting public land exchange and withdrawals, and for other purposes, as ordered reported by the House Committee on Agriculture, September 18, 1980.

This bill makes technical amendments to existing legislation to correct administrative problems on the public lands. Based on this review, it is estimated that no significant cost will be incurred and a small savings will be realized by the federal government as a result of the enactment of this legislation.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 7838, as amended.

No specific oversight activities other than the hearing detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of Rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman).

THE ACT OF JULY 8, 1943

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if the Secretary of Agriculture shall find after the acquisition by the United States of any land or interest therein which is subject to his administration, custody, or control, [other than land acquired by exchange of public domain land or resources,] that the title thereto is legally insufficient for the purposes for which such land or interest was acquired and no consideration therefor has been paid by the United States, or that title or color of title to such land or interest was acquired through mistake, misunderstanding, error, or inadvertence, he is hereby authorized to execute and deliver on behalf of and in the name of the United States to the person from whom the title was acquired or to the person whom he finds entitled thereto a quit claim deed to such land or interest: *Provided, however*, That if the person to whom such deed is made is the same person from whom the United States acquired title, or his successor in interest, any consideration given by the United States for such land or interest shall be restored or, in lieu thereof, the value equivalent of such consideration as determined by the Secretary of Agriculture shall be paid to the United States; and any consideration

or value equivalent so restored or paid shall, so far as is practicable, be restored to the jurisdiction, or deposited to the credit, of the department, agency, appropriation, or fund from which the consideration was transferred or paid at the time of the acquisition of title by the United States.

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FEDERAL POWER ACT OF 1920

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 24. (*a*) Any lands of the United States included in any proposed project under the provisions of this Part shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public-land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Part, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: *Provided*, That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites, or in connection with water-power development or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained: *Provided further*, That before any lands applied for, or heretofore or hereafter reserved, or classified as power sites, are declared open to location, entry, or selection by the Secretary of the Interior, notice of intention to make such declaration shall be given to the Governor of the State within which such lands are located, and such State shall have ninety days from the date of such notice within which to file, under any statute or regulation

applicable thereto, an application for the reservation to the State, or any political subdivision thereof, of any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways, and a copy of such application shall be filed with the Federal Power Commission; and any location, entry, or selection of such lands, or subsequent patent thereof, shall be subject to any rights granted the State pursuant to such application.

(b) Any lands reserved under subsection (a) of this section pursuant to the filing of a preliminary permit application shall be unconditionally restored to the status they would have had if the reservation under subsection (a) had not occurred, if—

(1) No license application or new preliminary permit application for a project that would use or occupy such lands has been accepted for filing within five years from either—

(i) the expiration date of the preliminary permit for the project that would have used such lands, if a preliminary permit was issued; or

(ii) the date of a final Commission order denying a preliminary permit; and

(2) The Secretary of Agriculture or the Secretary of the Interior has given notice to the Commission of intention to initiate action to restore such reserved lands to their prior status and the Commission has not within sixty days from the date of the notice issued notice to the respective Secretary that the condition specified in paragraph (1) has not been fulfilled.

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